300 NLRB No. 152

D--1655
Albany, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ARROW CARRIER CORPORATION

and

Case 3--CA--14091

TEAMSTERS LOCAL 294, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL--CIO

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Raudabaugh

On October 26, 1988, the National Labor Relations Board, in the absence of exceptions, adopted the decision of the administrative law judge ordering the Respondent, inter alia, to make payment of all outstanding medical claims filed by individual employees that were not covered because of the Respondent's delinquency in making contributions to the New York State Teamsters Council Health and Hospital Fund. A controversy having arisen over the amounts due certain employees under the terms of the Board's Order, the Regional Director for Region 3 on July 24, 1990, issued and duly served on the Respondent a compliance specification and notice of hearing, alleging the amounts due to certain employees in reimbursement for medical claims not covered by the Respondent during periods of the Respondent's delinquency. Although properly served copies of the compliance specification and notice of hearing by certified mail, the Respondent has failed to file an answer.

On October 3, 1990, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On October 11, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why

the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56 of the Board's Rules and Regulations provides that if an answer is not filed within 21 days from service of the compliance specification, the Board may find the allegations of the specification to be true and enter such order as may be appropriate. The specification states that unless an answer is filed within 21 days of service, ''such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that Region 3, by certified letter dated September 7, 1990, notified the Respondent that unless an answer was received by the close of business on September 24, 1990, a Motion for Summary Judgment would be filed. The Respondent has failed to file an answer.

Based on the foregoing and in the absence of good cause being shown for failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

The Board concludes that the sums due certain employees are as stated in the specification, and orders payment of such sums by the Respondent to the employees.

ORDER

The National Labor Relations Board orders that the Respondent, Arrow Carrier Corporation, Albany, New York, its officers, agents, successors, and assigns, shall make whole each of the employees named below by payment to them of the amounts set forth adjacent to their names, plus interest computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), and accrued to date of payment:

Harold Allen	$2156.50
Ronald Dawson	90.00
Philip Frank	152.26
Thomas Hughes	6.00
Gary Shippey	144.00

Dated, Washington, D.C. December 28, 1990

James M. Stephens, Chairman

Mary Miller Cracraft, Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

JD(NY)—80—88
Albany, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

ARROW CARRIER CORPORATION

and Case No. 3-CA-14091

TEAMSTERS, LOCAL 294, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA, AFL-CIO

Alfred M. Norek, Esq.
Albany, New York
for the General Counsel.
John R. Doherty, Esq.
North Bergen, New Jersey
for the Respondent.
Bruce C. Bramley, Esq.
(Pozefsky, Pozefsky & Bramley)
Albany, New York
for the Union.

DECISION

Statement of the Case

HAROLD B. LAWRENCE, Administrative Law Judge: This case was heard by me at Albany, New York on April 20, 1988. The complaint alleges that Arrow Carrier Corporation, the Respondent, has violated and continues to violate Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by failing and refusing to bargain collectively with Teamsters Local 294, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (the Union). Such refusal allegedly consisted of Respondent's failure to abide by provisions of its collective bargaining agreement with the Union requiring contribution to its Health and Hospital Fund and its Pension and Retirement Fund. The Respondent, in its answer, does not dispute that it made late payments, but asserts that it paid the contributions with liquidated damages for late payment as required by the agreement and therefore cannot be held to have abandoned the agreement. I dismissed a "cross complaint" but deemed its allegations continued as an affirmative defense that the Union had followed a practice of accepting late payments and discriminated against Respondent by allowing other employers to make late contributions and payments without prejudice other than payment of late charges and liquidated damages.

The parties were afforded full opportunity to be heard; to call, examine and cross-examine witnesses; and to introduce relevant evidence. A post-hearing brief has been filed on behalf of the General Counsel. None has been filed by Respondent. On the entire record, including my observation of the demeanor of the two witnesses who testified on behalf of the General Counsel (none testified on behalf of Respondent), and after consideration of the General Counsel's brief, I make the following:

Findings of Fact

I. Jurisdiction

There is no issue as to jurisdiction. Respondent has admitted, and I accordingly find, that Respondent is engaged as a common carrier in interstate transportation of freight and commodities, and in the preceding 12-month period, at its Albany facility, derived gross revenues in excess of $50,000 of which an amount in excess of $50,000 was received for interstate transportation of freight and commodities; that Respondent is now, and at all times material herein has been, an employer engaged in interstate commerce within the meaning of Section 2(2), (6) and (7) of the Act; and that the Union is and has at all pertinent times been a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. Respondent's Collective Bargaining Obligations Under the Collective Bargaining Agreement

Respondent's principal office is in North Bergen, New Jersey. It is party to a collective bargaining arrangement with the Union covering a unit of employees at a facility which it maintained in Albany, New York consisting of

> All full-time and regular part-time over-the-road and local cartage drivers; excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

The collective-bargaining arrangement is embodied in several agreements: the Teamsters National Master Freight Agreement; the New York State Teamsters Freight Division Supplemental Agreement, a participation agreement with the New York State Teamsters Conference Pension & Retirement Fund and a participation agreement with the New York State Teamsters Council Health & Hospital Fund. These require that Respondent make contributions to the Funds fixed on a weekly and daily basis, based on payroll through the last full week of each month and payable on the 10th day of the month following the month of accrual. The deadline may be and customarily is, extended by the Trustees up to the end of the month following the month of accrual.

The Articles governing both Funds contain identical provisions relating to noncompliance, which they define as "[f]ailure on the part of the Employer to regularly contribute as specified herein above..." (Emphasis supplied.) The employer is, by reason of failure to make regular contributions, rendered liable "for all claims, damages, attorneys fees, court costs, etc., plus all arrears in payments, plus a ten per cent (10%) penalty."

Payroll audits are conducted approximately every two years by payroll auditors expressly employed for that purpose. Disputes regarding audit results are resolved by an appeal procedure provided for in the agreements. An employer may not apply monthly contributions against a deficiency found on audit which it disputes while pursuing the appeal procedures, but must maintain the monthly payments. Al Sgaglione, the Executive Administrator of the New York State Teamsters Council Health & Hospital Fund and of the New York State Teamsters Conference Pension and Retirement Fund plans, in the course of his testimony noted the Respondent's responsibility to continue making contributions under the agreement even if the results of an audit were in dispute. An employer cannot help himself to an offset. The agreements also require that an employer who is delinquent in payments pay the amount of a claim which would have been paid by the Health and Hospital Fund if an employee's claim is denied for lack of coverage during a period for which the employer has failed to make the requisite contributions.

An employer may thus become delinquent by failure to make the monthly contribution, by failure to cure a deficiency found to exist on audit, or by failure to pay a claim.

The issue in the present case is whether failures on the Respondent's part amount to a violation of the Act.

B. The Nature and Extent of Respondent's Noncompliance with the Agreement to Make Contributions

The evidence establishes, without contradiction, that over a very long period of time Respondent failed to make timely monthly contributions to the funds and repeatedly paid the delinquent amounts along with the penalty prescribed in the agreement; that Respondent refused to pay a deficiency found to exist upon an audit of its payroll records for the period September 1985 through June 1987, despite numerous demands for payment; and that Respondent failed to pay a number of medical claims which accrued while Respondent was delinquent in contribution payments and which were thereby rendered ineligible for payment by the Health and Hospital Fund. Through testimony from the General Counsel's witnesses, Respondent has attempted to establish exculpatory circumstances, but the single instance in which it established a valid excuse for nonpayment of a claim was one for reimbursement of attorneys fees under a separate legal benefit plan (claim barred because the claimant failed to use an attorney from an approved panel of attorneys as required by the plan).

1. Late payment of monthly contributions

Respondent's answer admitted that Respondent had failed to abide by the provisions of Articles 51 and 52 of the collective-bargaining agreement to the extent that it made contributions late, paying them along with prescribed liquidated damages, but denied that it had thereby failed to continue in force the terms and conditions of the collective-bargaining agreement.

Not one of the payments due for the months of May through December 1987 and January and February 1988 was made by the tenth of the following month. Four of the payments were made during the second month following the month for which it accrued. Thus, the June contribution, payment of which was extended to July 10, arrived August 3rd; the August payment, due not later than September 10, arrived October 15; the payment due by October 10, for September, was received November 18; and the October contribution due by November 10 was received December 28.

The curing of defaults by making making late contributions with penalties is within the contemplation of the agreement, but such compliance with the terms of Articles 51 and 52, solely at the pleasure of Respondent, does not accord with either the letter or the spirit of the agreement. The penalty provision in essence is designed to cure default in compliance. It is not a license for noncompliance. Charles Bentley, the Secretary-Treasurer and business agent of Local 294, testified that the occasions when Respondent had been delinquent had been, in his words, "Too many times to mention. Numerous." They were patently not being made in conformity with the agreement. Respondent's only answer to this allegation, as became apparent on cross-examination of Sgaglione by Respondent's counsel, is that its repeated delays in payment have been countenanced by the Funds themselves.

Sgaglione conceded, on cross-examination, that when Respondent got around to paying its June 1987 contribution on August 3rd (it had been due on July 10), no penalty was imposed, and that he did not know whether liquidated damages had been waived for any other late payments. Respondent did not offer evidence to establish that they were. Sgaglione later explained that this particular payment had come in on a Monday when delinquency notices were still in preparation, and it was decided to give Respondent "a break." Such cavalier waiver of indebtedness, however, does not establish a practice and the testimony of Sgaglione relating to the Funds' normal practice of notifying employers of delinquency demonstrates that such an informal waiver was the exception rather than the rule. It does not condition Respondent's obligation to make payment in accordance with the agreement upon the making of repeated demands for payment. Even if Respondent's past delinquencies had been excused, the Funds are not precluded from halting the practice at any time and demanding compliance by an employer. Moreover, repeated failures to honor important provisions of a collective bargaining agreement are tantamount to rejection of collective bargaining and are violative of the Act, and cannot be condoned, regardless of what is done in any specific instance. In any event, the circumstances herein do not demonstrate any kind of waiver, condonation or modification of Respondent's obligations under the agreement.

2. Failure to pay deficiency fixed by audit

Pursuant to the collective bargaining agreement subjecting Respondent to periodic audit by the Funds, an audit was conducted for the period from September 1985 through June 1987. On September 16, 1987, the Fund office at Utica, New York, notified Respondent that it was liable for contribution underpayments for the period from September 1985 through June 1987 in the sum of $554.40 to the Health and Hospital Fund and in the amount of $2,006.20 to the Pension and Retirement Fund. An audit cost of $247.20 was billed on a time basis. Respondent has refused to pay the total amount of $2,807.80 on the excuse, articulated in the course of Respondent counsel's examination of the General Counsel's witnesses, that some of the delay was caused by Respondent's failure to receive the letter of September 16 at the time it was first issued, and that thereafter Respondent disputed the amount owing.

The speciousness of these excuses is apparent from an examination of the correspondence between Respondent and the Fund office. Respondent sent its payroll records to the Fund office on August 13, 1987. The Funds, in accordance with usual practice, returned the payroll records as soon as they were no longer needed; Respondent received them and gave a receipt for them. Sgaglione testified that audit reports are customarily written after employers' records are returned, and that the whole process usually takes about two weeks. Initial demand for payment was made by the Funds on September 16. On November 24, the demand was renewed together with demand for payment of delinquent contributions and liquidated damages for both funds, for the months of August and September, and for payment of members medical claims which were not covered by the Health and Hospital Fund because they accrued during a period when Respondent was delinquent in making contributions. The total amount was $8,544.77. Respondent did not answer and the demand was repeated on December 1. On December 3, Respondent replied that it had paid the September contributions but had not yet received the audit report or notification of the members' claims mentioned in the November 24 letter. Respondent also asserted that it was "researching" the liquidated damages. (In attempting to buttress its position, Respondent obtained a concession from Sgaglione that there have been instances in which employers failed to received the audit report. However, Sgaglione also testified that the Funds' practice is to send mailgrams to audited employers so advising them when the audit report has been issued. I conclude that Respondent received the audit report when it was first issued and, at the very least, received notice of its issuance at the time it was issued.) On December 11, Sgaglione acknowledged that the September payment, due on October 10, had been received on November 30 and provided a breakdown of the amounts then owed to the Funds for the audit period of September 1985 to June 1987, plus additional payments due for the August and September Fund contributions and amounts owing for Health and Hospital claims liability as per the November 24 letter. Copies of all previous correspondence and mail receipts respecting these claims was also sent along, with a breakdown of the medical claims of employees named Hughes, Dawson, Frank and Allen.

On December 18, Bentley demanded payment of delinquent Fund contributions and members' claims within 72 hours. On December 21, John R. Doherty, Respondent's general counsel, responded that Arrow's records showed that all amounts claimed to be due, except for one individual, had in fact been paid, and that because there was a discrepancy in the audit figures, review by the Joint Area Grievance Committee would be requested. With respect to the Health and Hospital liability, he requested verifiable copies of billing receipts for amounts claimed to have been expended by the employees who had lost eligibility and stated that payment of liquidated damages was being withheld pending resolution of the disputed aspects with which they were "intermingled." He did not specify the nature or amount of the supposed discrepancy in the audit.

On January 4, Sgaglione called Respondent's attention to the requirement that an employer disputing the results of an audit submit documentation supportive of contentions contrary to the audit report, and pointed out that the first steps of the review procedure consisted of conference with the Fund Counsel and the Fund Staff, followed by appeal to the Funds' Boards of Trustees. Copies of the claims forms submitted to the Funds by the employees on the medical claims were again provided. Sgaglione noted that the liquidated damages were for untimely payment, and again set forth the details.

On January 11, Paul Doherty, Respondent's president, sent two letters to Bentley, one of which asked for dates of prescriptions, copies of the medical bills for which a claimant named Allen had submitted cancelled checks and copies of the doctors' endorsements of the checks. This would appear to be normal prudence in verification of claims, and this letter stands out as a conspicuous exception to a trail of correspondence that otherwise leaves a dreary impression of deliberate delay. The other letter asserted that prescription claims covered a greater period of time than had been discussed between them. That letter can only be regarded as a deliberate stall, raising a captious objection which disregarded well-known provisions of the contract to which Respondent was a party.

In a letter dated February 9, 1988, Sgaglione acknowledged receipt of a letter of January 11 from John R. Doherty in which John R. Doherty acknowledged the correct appeals process and enclosed payment of liquidated damages for August and September 1987. Sgaglione stated that Bentley would supply the data requested by Paul Doherty. Sgaglione's letter repeated demand for payment of the audit amount and reiterated that disputes were required to be supported by documentation submitted to the Fund office for examination. On February 11, John Doherty wrote Sgaglione that Respondent could not discuss the audit because documentation regarding the audit amount had been given to Bentley and was no longer in Respondent's possession; Arrow would now have to be provided with new copies of the audit report "and in the meantime, will again attempt to recreate the researched documentation which disputes the audit and which was also given to Mr. Bentley." This letter can only be read as another step in the process of stalling payment.

On March 14 Sgaglione again demanded payment of $2,807.80 and warned that noncompliance would result in cancellation of participation in the Health and Pension Funds. On April 5, 1988, Sgaglione served notices declaring Respondent delinquent for February 1988 and cancelling Respondent's participation in the Health and Pension Funds. He renewed the demand for payment of $2,807.80 plus interest.

In later correspondence more data was forwarded to Respondent relating to payment of medical expenses incurred during delinquent periods by the claimants previously named.

John R. Doherty has asserted that Arrow was under the impression that Bentley was a Fund trustee and that discussions had with Bentley would therefore excuse Respondent's failure to communicate with the Fund office. Bentley testified that, nine out of ten times, members' reimbursement checks would be sent to him and one of his letters to Arrow did demand that the checks be forwarded to him. It was he who forwarded members' medical bills to Arrow. Bentley conceded he was a Fund trustee, as Doherty had thought he was. He received copies of all letters sent by the Funds to Arrow regarding members' claims. There is thus involvement on his part. But he pointed out that the Board could only act collectively and that he had no authority to act individually. Respondent's counsel, John R. Doherty, had to have known that too. Moreover, I credit Bentley's denial that he had any discussion about the audit with Paul Doherty. He testified that he met with Paul Doherty in January 1988 and discussed members' claims and Doherty agreed that on receipt of the bills he would pay them. Bentley explained the drug expense liability to Doherty, pointing out that a three-month period of coverage accrued for 36 days of work in a quarter.

All of the demands for payment sent to Respondent contained reminders that resort to the established appeal process was required in the event of a dispute respecting the amount found to be owing. Respondent has never invoked it.

Respondent has utterly failed to demonstrate that nonpayment has resulted from a genuine, sincere difference of opinion. Respondent has not even made it clear whether Respondent disputes all or only a part of the audit figure. Respondent has not conceded that any portion of the amount claimed is owing and has paid nothing at all. Despite numerous requests from the Fund office, Respondent has failed to state the particular respects in which it claims that the audit is in error. Most importantly, from the point of view of these proceedings, which are concerned with alleged violation of Section 8(a)(1) and (5) of the Act, Respondent has refused to resort to the correction and appeals process provided for in the agreements to which it is a party.

3. Failure to pay medical claims

The Health and Hospital Fund cannot pay claims of employees which accrue for medical services rendered during a period in which the employer is delinquent in payment of contributions. The employer is liable to the extent of the sum which the Fund would otherwise have paid. Sgaglione testified that subsequent curing of the

delinquency does not make a barred claim payable and the employee is still limited to recourse solely against the employer. The Funds do not engage in collection activity on behalf of employees.

The same foot-dragging that characterizes Respondent's behavior with respect to its obligations to the Funds is discernible its handling of recent employees' claims. That Respondent is aware of its obligation to pay these claims is apparent from the fact that Respondent has paid such claims in the past. Thus, on December 22, 1986, Respondent paid bills incurred by Harold Allen during a period of delinquency in the previous year. Since then, Respondent has failed to pay claims for medical costs incurred by five employees and/or their dependents during a period of delinquency which began on April 1, 1987. Claims were forwarded by the Health and Hospital Fund to Respondent's office at North Bergen, New Jersey on May 11, May 14 and June 9, 1987, covering medical services rendered in April and May 1987 to Allen ($139), Hughes ($72), Frank ($38.10), Dawson ($25), and Shippay ($5).

On November 24, 1987 Respondent's attention was called to medical claims in the amount of $1,963.70 not honored by the Fund because of Respondent's delinquency. Respondent, in a letter dated December 3, 1987, asserted that it intended to honor its agreements but lacked records respecting the audit liability and had no record of the members' unpaid claims, and consequently these claims, along with the claims for liquidated damages, "are also being researched and until fully accounted for, are disputed."

Respondent's employees were sent notice of its liability to them, and the Fund sent Respondent a series of letters with medical documentation respecting individual claimants. Sgaglione testified that he had no way of knowing whether or not Respondent had paid the claimants. Bentley testified that a number of claims were paid, for he stated that Respondent followed a practice of sending checks drawn to the order of claimants to the Union for transmittal to them. The information in that regard was subpoenaed by the General Counsel, but Respondent did not honor the subpoena. When production of the information was demanded at the hearing by counsel for the General Counsel, Respondent's counsel put forth a hair-splitting argument that the subpoena "requested all medical claims submitted directly to Arrow by employees. There were no medical claims submitted directly to Arrow by employees. I do not have a witness to testify to that matter, but that is a fact." He stated that he was unable to provide cancelled checks called for by the subpoena.

The subpoena requested production of all medical claims directly submitted to Respondent by employees represented by Teamsters Local 294 and the Funds and such books and records of Respondent, including cancelled checks, which would show the medical claims paid by Arrow. The subpoena manifestly called for production of information regarding payment of claims of which Respondent had been notified by the union and the funds. The correspondence in evidence showed payment of only a minute fraction of the medical claims recently presented for payment to Respondent by employees who had incurred medical expenses not eligible for payment by the Fund by

reason of Respondent's delinquency. Counsel for Respondent asserted that more than that had been paid, but offered no proof and produced no pertinent records, while admitting that Respondent had in its possession records other than cancelled checks which would show the information. No justification was presented for Respondent's failure to comply with the subpoena issued by the General Counsel. Accordingly, I infer that with the exception of the sum of $25, no payments have been made by Respondent to claimants regarding whom information was sent to Respondent by the Union or by the Fund. The inference is unrebutted, Respondent having offered no evidence in rebuttal, as it had an opportunity to do. (Respondent waived opening statement and rested its case without offering evidence.) I have already noted that Bentley testified that he met with Paul Doherty in January 1988 and Doherty agreed to pay the claims, but has not done so.

Another of Respondent's specious justifications is that the deficiencies in contributions all relate to Albany employees, but as of October 1, 1987, the Albany operations have been substantially curtailed and practically eliminated. Only one person continues to be employed there. The other eight or nine former employees now work for another employer who is making contributions to the fund and, while Respondent continues to operte under the Master Freight Agreement in Newburgh, Philadelphia and other localities in New Jersey, Massachusetts and Connecticut, the employees working there are within the jurisdiction of other Teamster locals. However, Respondent is responsible for contributions for October, November and December 1987 because the members earn their coverage in advance. An individual who accumulates 36 days in a quarter is covered for the succeeding quarter and thus may continue to be covered for a period of time after layoff. In any event, the open claims which the Fund is attempting to collect from Respondent go back to 1986 and are not limited to the last quarter of 1987.

C. Conclusion

The evidence establishes that Respondent has conducted itself in a manner designed to frustrate the rights of the Union and the employees under the Act. More than contractual breach is involved. Respondent in effect repudiates the collective bargaining agreement and is therefore in violation of Section 8(a)(5) of the Act. Its excuses became irrelevant because its conduct is repetitive and goes to the heart of the collective bargaining process. See Indiana and Michigan Electric Co., 284 NLRB No. 7, slip op. p. 18 (1987); General Split Corp., 284 NLRB No. 49, slip op. p. 3 (1987); International Distribution Centers, Inc., 281 NLRB No. 111 (1986) (rejecting excuse of precarious financial condition). Respondent has snarled all claims against it by obfuscation and procrastination and even attempted to stymie these proceedings by requesting adjournment of the hearing on an insubstantial ground despite ample advance notice of the date of the hearing and manifest lack of necessity for an adjournment as revealed in statements made by Respondent's own counsel at the time of the application. At the hearing, Respondent failed to produce subpoenaed records without any attempt at justification.

Respondent's deliberate refusal to comply with the requirements of its collective bargaining agreement constitutes a violation of Section 8(a)(1) and (5) of the Act.

Conclusions of Law

1. Respondent, at all pertinent times herein, was and is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union, at all pertinent times herein, was and is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (5) of the Act by reason of its failure and refusal to bargain collectively with the Union as the representative of the employees in the appropriate unit, in that Respondent failed and refused to make timely payments of contractually required contributions to the New York State Teamsters Health and Hospital Fund and to the New York State Teamsters Pension and Retirement Fund as required by the collective bargaining agreement between Respondent and the Union.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist from any continuing violation of the Act and to take certain affirmative action designed to effectuate the policies of the Act. Accordingly, I shall recommend that Respondent be directed to cease and desist from refusing to make timely payment of the required contributions to the respective funds and henceforth to make timely payments to them, make up all delinquent payments, pay the deficiency found to exist on the audit covering the period September 1985 through June 1987 and pay the medical claims of employees deprived of coverage by reason of its delinquencies. The complaint requests, as part of the relief, the granting of a discovery order. In view of Respondent's conduct, such relief appears to be appropriate and I have provided for it in the recommended Order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:

ORDER 1/

1/ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

The Respondent, Arrow Carrier Corporation, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Delaying payment of monthly contributions required by contract to be made to the New York State Teamsters Council Health and Hospital Fund and to the New York State Teamsters Conference Pension and Retirement Fund.

(b) Refusing to make payment of the deficiency found on audit to be owing to the said Funds for the period September 1985 through June 1987.

(c) Refusing to make payment of medical claims of employees whose coverage ceased during periods of Respondent's delinquency in making of contributions to the aforesaid funds.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Funds a sum adequate to cover all arrearages of contributions required to be made to the Funds from 1985 forward, including the amount of the deficiency in the amount determined by the audit and all sums owing to the date payment is made pursuant to this order.

(b) Make payment of all outstanding medical claims filed by individual employees which were not covered by the Fund because of Respondent's delinquencies.

(c) Pay interest and contractual penalties on all remittances to the funds in accordance with the agreements between Respondent and the Union.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records and all other records necessary to analyze the amounts payable under the terms of this Order.

(e) Post at its Albany, New York, facility copies of the attached notice marked "Appendix." 2/ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be

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2/ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, copies of the notice shall be mailed to all persons who were employed by Respondent from September 1985 to the present.

(f) Notify the Regional Director for Region 3 in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herein.

For the purpose of determining or securing compliance with this Order, the Board, or any of its duly authorized representatives, may obtain discovery from the Respondent, its officers, agents, successors or assigns, or any other person having knowledge concerning any compliance matter, in the manner provided by the Federal Rules of Civil Procedure. Such discovery shall be conducted under the supervision of the Unites States Court of Appeals enforcing this Order and may be had upon any matter reasonably related to compliance with this Order, as enforced by the Court.

Dated: Washington, D.C. September 8, 1988

Harold B. Lawrence
Administrative Law Judge

NOTICE TO EMPLOYEES

Posted by the Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT delay payment of monthly contributions required under the terms of our collective bargaining agreement with the Union to be made to the New York State Teamsters Council Health and Hospital Fund and to the New York Teamsters Conference Pension and Retirement Fund.

WE WILL NOT refuse to pay any deficiency found by the Funds, on audit, to be owing to the Funds, except by recourse to the appeal procedures contained in our participation agreements.

WE WILL NOT refuse to pay medical claims of employees whose coverage was lost by reason of our delinquency in making fund contributions.

WE WILL NOT change our employees' wages or other terms and conditions of employment established by collective bargaining with the Union, including amounts of or due dates of Fund contributions, without bargaining in good faith with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Funds a sum sufficient to cover all arrearages of contributions, including amounts found to be owing on audit of the period September 1985 through June 1987 and all monthly contributions owing to date.

WE WILL make payment of all outstanding medical claims of individual employees not covered by the Fund because of our delinquencies.

WE WILL pay interest and contractual penalties on all remittances.

ARROW CARRIER CORPORATION
(Employer)

Dated_____ By_____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.
Any questions concerning this notice or compliance with its provisions may be directed to the Board's office, Region 3, 111 W. Huron Street, Room 901, Buffalo, New York, 14202, TEL. NO.: 716-846-4951.